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SUBJECT: STILL WORKING ON OPIC'S RETURN TO UKRAINE

REF: Kyiv 249

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1. (SBU) Summary and comment: The final details of the agreement that would allow the Overseas Private Investment Corporation (OPIC) to return to Ukraine are still being hammered out, despite high hopes during President Biden's visit to Kyiv in July that a final solution had been found and OPIC would be back within a few weeks. Nonetheless, OPIC and TASCO, the firm designated to facilitate OPIC's return, are making tortured progress. We are guardedly optimistic that pressure from the Prime Minister's office, which views OPIC's return as a necessary step in upgrading Ukraine's attractiveness to foreign investors, will help to finalize the deal. The PM's office is also interested in OPIC cooperation with a to-be-formed Ukrainian Bank for Reconstruction and Development. End Summary and comment.

#### Background

2. (SBU) OPIC has been closed for business in Ukraine since the GOU failed to reimburse OPIC for an expropriation claim dating from the late 1990s. OPIC had insured Alliant Kyiv, a Ukrainian joint venture of U.S. firm Alliant Techsystems. Alliant Kyiv had intended to disassemble and recycle Soviet-era munitions with Ukrainian partners. OPIC paid out a \$17.7 million claim to Alliant Techsystems after the GOU expropriated the joint venture. In accordance with the 1992 intergovernmental agreement that provides for OPIC's operations in Ukraine, OPIC turned to the GOU for compensation. Although the GOU had steadfastly refused to acknowledge the claim or pay compensation, successive governments recognized the need to find a way to resolve the issue. OPIC's absence has kept needed U.S. investment away and harmed Ukraine's image as an investment destination.

3. (SBU) In late-2007, the GOU proposed a solution, whereby Ukrainian firm TASCO would pay OPIC \$5 million in equal installments over ten years without interest. The Ukrainian Export-Import Bank (UkrExIm) or other satisfactory guarantor would guarantee the deal. In return, TASCO would gain the rights to recycle munitions from the Ukrainian Ministry of Defense, thus creating cash flow for the firm. Through a number of twists and turns, the Ukrainian Cabinet of Ministers finally on July 17, 2009, on the eve of Vice President Biden's visit to Kyiv, passed a resolution instructing the Defense Ministry to transfer unfit and excessive ammunition to the TASCO in 2009-2010. It was hoped that OPIC could begin operations in Ukraine again within a matter of weeks.

Negotiations Ongoing

¶4. (SBU) However, negotiations continue between OPIC and TASC0. While progress has been made, including TASC0's recent finalization of its contracts with the Ministry of Defense, there is still work to be done. In particular, three main issues remain: a guarantee for the full stream of payments (\$5 million over 10 years) to OPIC from UkrExIm; a release from liability to pay OPIC for TASC0 should MOD fail to supply munitions to TASC0; and onerous requests for documentation from the Alliant investments that happened over ten years ago.

#### Prime Minister Wants Closure

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¶5. (SBU) Both Deputy Prime Minister Nemyrya and Alex Ginzburg, an advisor to Prime Minister Tymoshenko, have reached out to us in recent weeks to express the desire to close the OPIC deal as soon as possible. Nemyrya had hoped to be able to announce something during his visit to the United States the week of October 12. Although it would have been premature for an announcement, active engagement from the Prime Minister's office may prove helpful in closing the deal. Embassy econoffs met with PM Advisor Alex Ginzburg on October 22 to encourage further GOU engagement. Ginzburg emphasized that the GOU would like to see a quick return of OPIC to Ukraine, and he offered to engage with both UkrExIm and TASC0 to sort out the final details of the agreement.

#### UkrExIm Guarantee

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¶6. (SBU) Ginzburg understood that OPIC requires UkrExIm to guarantee the entire stream of payments over the full 10 years/ \$5 million. He noted that he met with UkrExIm on October 21 to press the bank (which is state-owned) to provide the full stream guarantee. Econoff emphasized that OPIC could not accept other options (such

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as UkrExIm providing the first payment and local insurers taking on the risk for future payments) despite TASC0's reluctance, due to cost, for using UkrExIm for the full guarantee. Ginzburg said he would speak with UkrExIm and TASC0 to press for a full, comprehensive guarantee.

#### TASC0's Desire to Mitigate Commercial Risk

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¶7. (SBU) Another area of difficulty in OPIC's negotiations with TASC0 has revolved around TASC0's desire to mitigate the commercial risk associated with the deal. TASC0 is looking for guarantees that would release it from liability to pay OPIC should MOD fail to supply munitions under its own contract with TASC0. Ginzburg was previously unaware of this problem, but agreed to speak with TASC0 about insuring this risk locally, with UkrExIm or other local insurance provider. Ginzburg understood that OPIC would not release TASC0/UkrExIm from the obligation to pay should MOD fail to transfer the munitions.

#### Documentation Requirements

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¶8. (SBU) TASC0 has repeatedly asked OPIC for documents dating back to the original Alliant- Kyiv and Alliant Techsystems investments in the 1990s. TASC0 claims that UkrExIm and others require these documents to approve the guarantees and receive permission to make foreign currency payments to OPIC. OPIC has asked for a more reasonable, practical approach to the issue, and Ginzburg agreed to speak with higher-level management at UkrExIm. Ginzburg seemed sympathetic and questioned why UkrExIm was asking for these old documents that were not pertinent to the current deal.

#### Ginzburg's Project -- UBRD

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¶9. (SBU) In a recent exchange of letters with OPIC's acting President, Dr. Spinelli, Ginzburg suggested that the GOU wanted to set up a 50.1% government-owned Ukrainian Bank for Reconstruction

and Development (UBRD) to act as a conduit for a flow of OPIC guaranteed funds. Econoff emphasized that the priority was the conclusion of OPIC-TASCO negotiations and informed Ginzburg that OPIC does not lend to government-owned entities. However, there could be ways to cooperate within OPIC's mission of supporting private sector investment with significant U.S. private sector participation. Econoff said structures could be considered that might involve co-lending. Ginzburg said he could be flexible and elaborated that he hoped to use a UBRD and its envisioned ability to provide sovereign guarantees, to improve investor confidence in Ukraine and bring FDI back to Ukraine. In particular, he wanted to use UBRD lending to support the aviation industry, which PM Tymoshenko has actively been trying to revive. Ginzburg also foresaw lending to upgrade ports, energy, and telecoms infrastructure.

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